



Taxation Laws Amendment (Excise Arrangements) Act 2001

No. 25, 2001



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An Act to amend the law relating to customs and excise, and for related purposes

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No. 25, 2001

An Act to amend the law relating to customs and excise, and for related purposes

[Assented to 6 April 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment (Excise Arrangements) Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the earlier of:
 - (a) 1 July 2001; and

-
- (b) 28 days after the day on which this Act receives the Royal Assent.
- (2) Items 69, 106 and 109 of Schedule 2, items 83 and 103 of Schedule 3, item 53 of Schedule 4, item 26 of Schedule 5 and item 22 of Schedule 6 commence:
- (a) if Parts 4 to 10 of the *Administrative Review Tribunal Act 2001* have not commenced when the other provisions of this Act commence under subsection (1)—immediately after the commencement of those Parts; or
 - (b) otherwise—immediately after the commencement under subsection (1).
- (3) Item 23 of Schedule 6:
- (a) if Parts 4 to 10 of the *Administrative Review Tribunal Act 2001* have not commenced when the other provisions of this Act commence under subsection (1)—commences immediately after the commencement of those Parts; or
 - (b) otherwise—never commences.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Excise Act 1901 relating to search and seizure

1 After Division 1 of Part IX

Insert:

Division 1A—Search and seizure

Subdivision A—Preliminary

107AA Definitions

In this Division, unless the contrary intention appears:

container includes:

- (a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and
- (b) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose.

Note: *Container* is defined differently in the rest of the Act.

evidential material, in relation to an offence, whether the offence is indictable or summary, means a thing relevant to the offence, including such a thing in electronic form.

executing officer, in relation to a search warrant or to a seizure warrant, means:

- (a) an officer named in the warrant by the judicial officer issuing it as being responsible for executing the warrant; or
- (b) if that officer does not intend to be present at the execution of the warrant—any officer whose name has been written in the warrant by the officer so named; or
- (c) another officer whose name has been written in the warrant by the officer last named in the warrant.

forfeited goods means goods described as forfeited to the Crown under:

- (a) section 116 of this Act; or

- (b) section 26 of the *Coal Excise Act 1949*; or
- (c) section 73 of the *Distillation Act 1901*; or
- (d) section 17 of the *Spirits Act 1906*.

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

judicial officer, in relation to a search warrant or to a seizure warrant, means:

- (a) a magistrate; or
- (b) a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants.

magistrate means a magistrate who is remunerated by salary or otherwise.

occupier, in relation to premises that are a conveyance or a container, means the person having charge of the conveyance or container.

offence means an offence against:

- (a) this Act; or
- (b) the *Coal Excise Act 1949*; or
- (c) the *Distillation Act 1901*; or
- (d) the *Spirits Act 1906*.

ordinary search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes or hat; and
- (b) an examination of those items.

person assisting, in relation to a search warrant or to a seizure warrant, means:

- (a) an officer who is assisting in the execution of the warrant; or
- (b) a police officer who is assisting in the execution of the warrant; or

- (c) a person whose name has not been written in the warrant and who has been authorised by the CEO to assist in executing the warrant.

premises includes a place, a conveyance or a container.

search warrant means a warrant issued under section 107BA.

seizure notice means a notice of the kind referred to in section 107FC.

seizure warrant means a warrant issued under section 107CA.

warrant premises means premises in relation to which a search warrant or a seizure warrant is in force.

107AB Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

Subdivision B—Search warrants in respect of things believed to be evidential material

107BA When search warrants can be issued

- (1) A judicial officer may issue a warrant to search premises if the judicial officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or within the next 72 hours there will be, any evidential material, other than evidential material that is also a forfeited good, on or in the premises.
- (2) If:
 - (a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or the seizure of goods that are on or in, the same premises; and
 - (b) the premises are not an excise place;the person must state particulars of those applications and their outcome in the information.
- (3) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:

- (a) the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates; and
 - (c) the kind of evidential material that is to be searched for under the warrant; and
 - (d) the name of the officer who, unless he or she inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (f) whether the warrant may be executed at any time or only during particular hours.
- (4) The judicial officer is also to state in the warrant:
- (a) that it authorises the seizure of things (other than evidential material of the kind referred to in paragraph (3)(c)) found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:
 - (i) to be evidential material in relation to an offence to which the warrant relates or to another offence; and
 - (ii) not to be forfeited goods;if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
 - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material in his or her possession.
- (5) Paragraph (3)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (6) If the application for the warrant is made under section 107DG, this section applies as if:
- (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (3)(e) referred to 48 hours rather than 7 days.

- (7) A judicial officer of a particular State or Territory may issue a warrant in respect of the search of premises in another State or Territory.
- (8) This section is not to be taken to limit any power of search granted to an officer under any other provision of an Excise Act.

107BB The things that are authorised by a search warrant

- (1) A search warrant that is in force in relation to premises authorises the executing officer or a person assisting:
 - (a) to enter the warrant premises; and
 - (b) to search for and to record fingerprints found on or in the premises, and take samples of things (other than human biological fluid or tissue) found on or in the premises for forensic purposes; and
 - (c) to search the premises for the kind of evidential material specified in the warrant, and to seize things of that kind found on or in the premises; and
 - (d) to seize other things found on or in the premises in the course of the search that the executing officer or a person assisting believes on reasonable grounds:
 - (i) to be evidential material in relation to an offence to which the warrant relates or to another offence; and
 - (ii) not to be forfeited goods;if the executing officer or person assisting believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
 - (e) if the warrant so allows:
 - (i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any evidential material in his or her possession; and
 - (ii) to seize any such material found in the course of the search.
- (2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a

container, the warrant extends to every conveyance or container on the premises.

- (3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
 - (a) permits entry of the conveyance, wherever it is; and
 - (b) extends to every container on the conveyance.
- (4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.
- (5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

107BC Use of equipment to examine or process things

- (1) The executing officer or a person assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found on or in the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
 - (a) it is not practicable to examine or process the things on or in the warrant premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:
 - (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and

- (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or a person assisting may operate equipment already on or in the warrant premises to carry out the examination or processing of a thing found on or in the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person assisting believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

107BD Use of electronic equipment on or in premises

- (1) The executing officer or a person assisting may operate electronic equipment on or in the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the executing officer or a person assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities on or in the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
 - (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is on or in the premises and the use of which for that purpose has been agreed to in writing by the occupier of the premises;operate the equipment to copy the material to the storage device and take the storage device from the premises.
- (3) The executing officer or a person assisting may seize equipment under paragraph (2)(a) only if it is not practicable to put the

material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c).

- (4) If the executing officer or a person assisting believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment on or in the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;whichever first occurs.
- (7) If the executing officer or a person assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a judicial officer for an extension of that period.
- (8) The executing officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (9) The provisions of this Subdivision relating to the issue of warrants apply, with such modifications as are necessary, to the issuing of an extension.

107BE Compensation for damage to equipment or data

- (1) This section applies if:
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- (a) damage is caused to equipment as a result of it being operated as mentioned in section 107BC or 107BD; or
 - (b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;
- because:
- (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (d) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as they agree on.
 - (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
 - (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
 - (5) Compensation is payable out of money appropriated by the Parliament.
 - (6) In this section:
damage, in relation to data, includes damage by erasure of data or addition of other data.

107BF Copies of seized things to be provided

- (1) Subject to subsection (2), if the executing officer or a person assisting seizes, under a warrant relating to premises:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device, the information in which can be readily copied;the executing officer or person assisting must, if requested to do so by the occupier of the premises or another person who apparently

represents the occupier and who is present when the warrant is executed, give a copy of the document, film, computer file, thing or information to that person as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 107BD(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Subdivision C—Seizure of goods believed to be forfeited goods

107CA When seizure warrants can be issued

- (1) A judicial officer may issue a warrant to seize goods on or in particular premises if the judicial officer is satisfied by information on oath that an officer:
- (a) has reasonable grounds for suspecting that the goods:
 - (i) are forfeited goods; and
 - (ii) are, or within the next 72 hours will be, on or in the premises; and
 - (b) has demonstrated the necessity, in all the circumstances, for seizure of the goods.
- (2) In considering whether the officer has demonstrated the necessity, in all the circumstances, for seizure of the goods, the judicial officer may have regard to, but is not limited to, consideration of the following factors:
- (a) the seriousness or otherwise of any offence because of the commission of which the goods are believed to be forfeited goods;
 - (b) the circumstances in which any such offence is believed to have been committed;
 - (c) the pecuniary or other penalty that might be imposed for any such offence;
 - (d) the nature, quality, quantity and estimated value of the goods;
 - (e) whether administrative penalties might be imposed in respect of the goods;
 - (f) the inconvenience or cost to any person having a legal or equitable interest in the goods if they were seized.

- (3) If:
- (a) the person applying for the warrant has, at any time previously, applied for a warrant relating to the search of, or seizure of goods that are on or in, the same premises; and
 - (b) the premises are not an excise place;
- the person must state particulars of those applications and their outcome in the information.
- (4) If a judicial officer issues a warrant, the judicial officer is to state in the warrant:
- (a) a description of the goods to which the warrant relates; and
 - (b) a description of the premises on or in which the goods are believed to be located; and
 - (c) the name of the officer who, unless that officer inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
 - (d) the period for which the warrant remains in force, which must not be more than 7 days; and
 - (e) whether the warrant may be executed at any time or only during particular hours.
- (5) The judicial officer is also to state in the warrant whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed, if the executing officer or a person assisting suspects on reasonable grounds that the person has any forfeited goods of the kind referred to in paragraph (4)(a) in his or her possession.
- (6) Paragraph (4)(d) does not prevent the issue of successive warrants in relation to the same premises.
- (7) If the application for the warrant is made under section 107DG, this section applies as if:
- (a) subsection (1) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (4)(d) referred to 48 hours rather than 7 days.
- (8) A judicial officer of a particular State or Territory may issue a warrant in respect of the seizure of goods on or in premises in another State or Territory.

107CB The things that are authorised by seizure warrants

- (1) A seizure warrant that is in force in relation to premises authorises the executing officer or a person assisting:
 - (a) to enter the warrant premises; and
 - (b) to search for the goods described in the warrant; and
 - (c) to seize the goods described in the warrant; and
 - (d) if the warrant so allows:
 - (i) to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a person assisting suspects on reasonable grounds that the person has any goods that are goods the subject of the warrant in his or her possession; and
 - (ii) to seize any such goods found in the course of that search.
- (2) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are not a conveyance or a container, the warrant extends to every conveyance or container on the premises.
- (3) Without limiting the generality of the powers conferred by a warrant issued in respect of premises that are a conveyance, the warrant:
 - (a) permits entry of the conveyance, wherever it is; and
 - (b) extends to every container on the conveyance.
- (4) A warrant issued in respect of premises that are a container permits entry of the container, wherever it is, to the extent that it is of a size permitting entry.
- (5) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (6) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised must not be done under the warrant.

Subdivision D—Provisions applicable both to search and seizure warrants

107DA Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Division must, if practicable, be conducted by a person of the same sex as the person being searched.

107DB Announcement before entry

- (1) The executing officer must, before any person enters premises under a search warrant or a seizure warrant:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The executing officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including the executing officer); or
 - (b) that the effective execution of the warrant is not frustrated.

107DC Details of warrant to be given to occupier

- (1) If:
 - (a) a search warrant or a seizure warrant in relation to premises is being executed; and
 - (b) the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed;the executing officer or a person assisting must make available to that person a copy of the warrant.
- (2) If a person is searched under a warrant in relation to premises, the executing officer or a person assisting must show the person a copy of the warrant.
- (3) The executing officer must identify himself or herself to the person at the place where the warrant is executed.

- (4) At the time of executing the warrant, the executing officer or a person assisting:
- (a) is not required to have in his or her possession or under his or her immediate control the original warrant; but
 - (b) must have in his or her possession or under his or her immediate control a copy of the warrant.
- (5) In this section:
- a copy of the warrant*** means:
- (a) in relation to a warrant issued under section 107BA or 107CA—a copy that includes the signature of the judicial officer who issued the warrant and the seal of the relevant court; and
 - (b) in relation to a warrant issued under section 107DG—a completed form of warrant that includes the name of the judicial officer who issued the warrant.

107DD Occupier entitled to be present during search or seizure

- (1) If:
- (a) a search warrant or a seizure warrant in relation to premises is being executed; and
 - (b) the occupier of the premises or another person who apparently represents the occupier is present at the place where the warrant is executed;
- the person is, subject to Part 1C of the *Crimes Act 1914*, entitled to observe the search or seizure being conducted.
- (2) The right to observe the search or seizure being conducted ceases if the person impedes the search or seizure.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

107DE Availability of assistance and use of force in executing a warrant

In executing a search warrant or a seizure warrant:

- (a) the executing officer may obtain such assistance; and

- (b) the executing officer, or an officer who is assisting in executing the warrant, may use such force against persons and things;

as is necessary and reasonable in the circumstances.

107DF Specific powers available to executing officers

- (1) In executing a search warrant or a seizure warrant in relation to premises, the executing officer or a person assisting may:
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing;take photographs or video recordings of the premises or of things on or in the premises.
- (2) If a search warrant or a seizure warrant in relation to premises is being executed, the executing officer and the persons assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:
 - (a) for not more than one hour; or
 - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
 - (a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force;the execution of the warrant may be completed.
- (4) If:
 - (a) the execution of a search warrant or of a seizure warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant has ceased to be in force;the court revoking or reversing the order may reissue the warrant for a further period not exceeding 7 days.
- (5) The court must not exercise the power under subsection (4) unless it is satisfied of the matters set out in subsection 107BA(1) or 107CA(1).

107DG Warrants by telephone or other electronic means

- (1) An officer may apply to a judicial officer for a search warrant or for a seizure warrant by telephone, fax or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The judicial officer may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section must include all information required to be provided in an ordinary application for a search warrant or for a seizure warrant, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to a judicial officer under this section and the judicial officer, after considering the information and having received and considered such further information (if any) as the judicial officer required, is satisfied that:
 - (a) a search warrant or a seizure warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the judicial officer may complete and sign the same form of warrant that would be issued under section 107BA or 107CA.
- (5) If the judicial officer decides to issue the warrant, the judicial officer is to inform the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given by the judicial officer, stating on the form the name of the judicial officer and the day on which and the time at which the warrant was signed.
- (7) The applicant must, not later than the day after:
 - (a) the day of expiry of the warrant; or
 - (b) the day on which the warrant was executed;whichever is the earlier, give or transmit to the judicial officer the form of warrant completed by the applicant and, if the information

referred to in subsection (3) was not sworn, that information duly sworn.

- (8) The judicial officer must:
- (a) attach to the documents provided under subsection (7) the form of warrant signed by the judicial officer; and
 - (b) give or transmit to the applicant the attached documents.
- (9) If:
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the judicial officer is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

107DH Receipts for things seized under warrant

- (1) If a thing is seized under a search warrant or a seizure warrant, the executing officer or a person assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

107DI Offence for making false statements in warrants

A person must not make, in an application for a search warrant or for a seizure warrant, a statement if the person knows that the statement:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading.

Penalty: Imprisonment for 2 years.

107DJ Offences relating to telephone warrants

A person must not:

- (a) state in a document that purports to be a form of warrant under section 107DG the name of a judicial officer unless that judicial officer issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the judicial officer; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
 - (i) has not been approved by a judicial officer under that section; or
 - (ii) departs in a material particular from the terms authorised by a judicial officer under that section; or
- (d) give to a judicial officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision E—Dealing with things seized as evidential material under a search warrant or section 9 of the Crimes Act 1914

107EA Retention of things seized under a search warrant etc.

- (1) Subject to any law of the Commonwealth, a State or a Territory permitting the retention, destruction or disposal of a thing seized as evidential material by an officer under a search warrant or section 9 of the *Crimes Act 1914*, the officer in charge of the investigation must return it if:
 - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) 120 days after its seizure:
 - (i) proceedings in respect of which the thing may afford evidence have not been started; and
 - (ii) an order permitting the thing to be retained has not been made under section 107EB; and

- (iii) an order of a court of the Commonwealth or of a State or Territory permitting the retention, destruction or disposal of the thing has not been made;
- whichever first occurs.
- (2) For the purposes of this section, the return of a thing requires its return to the person reasonably believed to be the owner of the thing in a condition as near as practicable to the condition in which it was seized.

107EB Magistrate may permit a thing seized under a search warrant etc. to be retained

- (1) If a thing is seized as evidential material by an officer under a search warrant or section 9 of the *Crimes Act 1914*, and:
 - (a) before the end of 120 days after the seizure; or
 - (b) before the end of a period previously specified in a magistrate's order under this section;proceedings in respect of which the thing may afford evidence have not been started, an officer may apply to a magistrate for an order that the thing be retained.
- (2) If the magistrate is satisfied:
 - (a) that it is necessary for the retention of the thing to be continued:
 - (i) for the purposes of an investigation as to whether an offence has been committed; or
 - (ii) to enable evidence of an offence to be assembled for the purposes of a prosecution; and
 - (b) that there has been no avoidable delay in conducting the investigation or assembling the evidence concerned;the magistrate may order that the thing be retained for a period specified in the order.
- (3) Before making the application, the officer must:
 - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the officer believes to have such an interest of the proposed application.

Subdivision F—Dealing with forfeited goods seized under a seizure warrant or section 9 of the Crimes Act 1914

107FA Seized goods to be secured

(1) In this section:

storage place, in relation to goods, means a place approved by a Collector as a place for the storage of goods of that kind.

- (2) If an officer seizes any goods under a seizure warrant, the officer must, as soon as practicable, take those goods to a storage place.
- (3) If a person assisting under a seizure warrant (other than an officer) seizes any forfeited goods under the warrant, the person must, as soon as practicable, deliver the goods into the custody of an officer.
- (4) If a police officer seizes any forfeited goods under section 9 of the *Crimes Act 1914*, the police officer must, as soon as practicable, deliver the goods into the custody of an officer.
- (5) If goods are delivered to an officer under subsection (3) or (4), the officer must:
- (a) if paragraph (b) does not apply—as soon as practicable, deliver the goods to a storage place; or
 - (b) if the goods are delivered to the officer at a storage place—leave the goods at that place.

107FB Requirement to serve seizure notices

- (1) After goods have been seized under a seizure warrant or section 9 of the *Crimes Act 1914*, the officer in charge of the investigation must serve, within 7 days after the seizure, a seizure notice on:
- (a) the owner of the goods; or
 - (b) if the owner cannot be identified after reasonable inquiry—the person in whose possession or under whose control the goods were when they were seized.
- (2) Subsection (1) applies whether or not a claim for the return of the goods seized has been made under section 107FD.
- (3) The notice must be in writing and must be served:

- (a) personally or by post; or
 - (b) if no person of the kind referred to in subsection (1) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.
- (4) A seizure notice may be served on a person who is outside Australia.

107FC Matters to be dealt with in seizure notices

A seizure notice must set out the following:

- (a) a statement identifying the goods;
- (b) the day on which they were seized;
- (c) the ground, or each of the grounds, on which they were seized;
- (d) a statement that, if a claim for the return of the goods has not already been made, and is not made within 30 days after the day the notice is served, the goods will be taken to be condemned as forfeited to the Crown;
- (e) if:
 - (i) the notice is to be served in a foreign country; and
 - (ii) the person served has not yet made such a claim;a statement that the person served may not make such a claim unless he or she has first appointed in writing an agent in Australia with authority to accept service of documents, including process in any proceedings arising out of the matter.

107FD Claim for return of goods seized

- (1) If forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*, the owner of the goods may, whether or not a seizure notice has yet been served on the owner, make a claim to the CEO for the return of the goods.
- (2) A claim:
 - (a) must be in writing in an approved form; and
 - (b) must specify the grounds on which the claim is made; and
 - (c) if it is made by a person who does not reside or have a place of business in Australia, must:

- (i) appoint an agent in Australia with authority to accept service of documents, including process in any proceedings, arising out of the matter; and
- (ii) specify the address of the agent for service; and
- (iii) be accompanied by the written consent of the agent, signed by the agent, agreeing to act as agent.

107FE Treatment of goods seized if no claim for return is made

If:

- (a) forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) a seizure notice has been served; and
 - (c) at the end of 30 days after the day the notice was served, no claim has been made for return of the goods;
- the goods are taken to be condemned as forfeited to the Crown.

107FF Treatment of goods seized if a claim for return is made

- (1) This section applies if:
 - (a) forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) not later than 30 days after the day the seizure notice was served, a claim is made under section 107FD for return of the goods.
- (2) The officer in charge of the investigation must, subject to any law of the Commonwealth, a State or a Territory permitting their retention, destruction or disposal, return the goods unless:
 - (a) the goods have been dealt with under section 107FJ; or
 - (b) each of the following applies:
 - (i) not later than 120 days after the claim for their return is made, proceedings in respect of an offence involving the goods have been commenced;
 - (ii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or
 - (c) each of the following applies:

- (i) not later than 120 days after the claim for their return is made, an order permitting the goods to be retained for a specified period has been made under section 107FG;
 - (ii) before the end of that specified period, proceedings in respect of an offence involving the goods have been commenced;
 - (iii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or
- (d) each of the following applies:
- (i) not later than 120 days after the claim for their return is made, an order permitting the goods to be retained for a specified period has been made under section 107FG;
 - (ii) before the end of that specified period, proceedings have been commenced before a court of summary jurisdiction for a declaration that the goods are special forfeited goods;
 - (iii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown; or
- (e) if the goods were seized as special forfeited goods:
- (i) not later than 120 days after the claim for their return is made, proceedings before a court of summary jurisdiction for a declaration that the goods are special forfeited goods have been commenced; and
 - (ii) on completion of the proceedings, a court has made an order for condemnation of the goods as forfeited to the Crown.
- (3) If:
- (a) forfeited goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* have not been dealt with under section 107FJ; and
 - (b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and
 - (c) on completion of the proceedings, the court:
 - (i) finds that the offence is proved; and
-

- (ii) is satisfied, in all the circumstances of the case, that it is appropriate that an order be made for condemnation of the goods as forfeited to the Crown;
the court must make an order to that effect.
- (4) If:
- (a) forfeited goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* have not been dealt with under section 107FJ; and
 - (b) proceedings of the kind referred to in paragraph (2)(b) or (c) are commenced in respect of an offence involving the goods; and
 - (c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;
- the court must make an order for condemnation of the goods as forfeited to the Crown, whether or not the court finds the offence proved.
- (5) Subject to subsection (6), if:
- (a) goods seized as special forfeited goods have not been dealt with under section 107FJ; and
 - (b) proceedings of the kind referred to in paragraph (2)(d) or (e) are commenced in respect of the goods; and
 - (c) on completion of the proceedings, the court is satisfied that the goods are special forfeited goods;
- the court must declare the goods to be special forfeited goods and make an order for condemnation of the goods as forfeited to the Crown.
- (6) A court must not make an order for condemnation of goods under subsection (5) if proceedings for an offence involving the goods have been commenced.
- (7) If the finding of a court in proceedings under paragraph (2)(b), (c), (d) or (e) in respect of goods that have not been dealt with under section 107FJ may be taken on appeal to another court, the goods are not to be returned under subsection (2), or disposed of under section 107FM:
- (a) while that appeal may be made, or
 - (b) if it is made, until the completion of that appeal.

(8) For the purposes of this section, the return of goods requires their return to the person reasonably believed to be the owner of the goods in a condition as near as practicable to the condition in which they were seized.

(9) In this section:

offence means an offence against any law of the Commonwealth, a State or a Territory.

special forfeited goods means:

- (a) goods that are forfeited under a paragraph of section 73 of the *Distillation Act 1901* other than paragraph 73(iv); and
- (b) goods that are forfeited under section 17 of the *Spirits Act 1906*.

(10) In this section, a reference to completion of proceedings includes a reference to completion of any appeal process arising from those proceedings.

107FG Magistrate may permit goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* to be retained

(1) If forfeited goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914* and:

- (a) before the end of 120 days after the making of a claim for their return; or
- (b) before the end of the period previously specified in a magistrate's order under this section;

proceedings of the kind referred to in paragraph 107FF(2)(b) have not been started, an officer may apply to a magistrate for an order that the goods be retained.

(2) If the magistrate is satisfied that it is necessary:

- (a) that the retention of the goods continue while evidence of the offence to which the proceedings referred to in paragraph 107FF(2)(b) relate is assembled; and
- (b) that there has been no avoidable delay in assembling that evidence;

the magistrate may order that the goods be retained for a period specified in the order.

- (3) Before making the application, the officer must:
 - (a) take reasonable steps to discover who has an interest in the retention of the goods; and
 - (b) if it is practicable to do so, notify each person whom the officer believes to have such an interest of the proposed application.

107FH Right of compensation in certain circumstances for goods disposed of or destroyed

- (1) Despite the disposal or destruction of goods taken to be condemned as forfeited to the Crown because no claim for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation.
- (2) A right to compensation exists if:
 - (a) the goods are not special forfeited goods within the meaning of section 107FF; and
 - (b) the goods were not used or otherwise involved in the commission of an offence; and
 - (c) the person establishes, to the satisfaction of the court:
 - (i) that he or she is the rightful owner of the goods; and
 - (ii) that there were circumstances providing a reasonable excuse for the failure to claim the goods not later than 30 days after the day the seizure notice was served.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to:
 - (a) if the goods have been sold—the proceeds of the sale; and
 - (b) if the goods have been destroyed—the market value of the goods at the time of their destruction.

107FI Effect of forfeiture

When goods are, or are taken to be, condemned as forfeited to the Crown, the title to the goods immediately vests in the Commonwealth to the exclusion of all other interests in the goods, and the title cannot be called into question.

107FJ Immediate disposal of certain goods

- (1) If:
 - (a) goods are seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) the goods are perishable goods; and
 - (c) the CEO is satisfied that the retention of the goods would constitute a danger to public health;the CEO may cause the goods to be dealt with in such manner as he or she considers appropriate (including the destruction of the goods).
- (2) As soon as practicable, but not later than 7 days after the goods referred to in subsection (1) have been dealt with, the CEO must give or publish a notice in accordance with subsection (4).
- (3) The notice must be in writing and must be served:
 - (a) personally or by post on the owner of the goods or, if the owner cannot be identified after reasonable inquiry, on the person in whose possession or under whose control the goods were when they were seized; or
 - (b) if no person of the kind referred to in paragraph (a) can be identified after reasonable inquiry—by publishing a copy of the notice in a newspaper circulating in the location in which the goods were seized.
- (4) The notice must:
 - (a) identify the goods; and
 - (b) state that the goods have been seized under a seizure warrant or section 9 of the *Crimes Act 1914* (as the case may be) and give the reason for the seizure; and
 - (c) state that the goods have been dealt with under subsection (1) and specify the manner in which they have been so dealt with and the reason for doing so; and
 - (d) set out the terms of subsection (5).
- (5) If goods are dealt with in accordance with subsection (1), the owner of the goods may bring an action against the Commonwealth in a court of competent jurisdiction for the recovery of the market value of the goods at the time they were so dealt with.

- (6) A right to recover the market value of the goods at the time they were dealt with in accordance with subsection (1) exists if:
 - (a) the goods are not special forfeited goods within the meaning of section 107FF; and
 - (b) the goods were not used or otherwise involved in the commission of an offence; and
 - (c) the owner of the goods establishes, to the satisfaction of the Court, that the circumstances for them to be so dealt with did not exist.
- (7) If a person establishes a right to recover the market value of the goods at the time they were dealt with, the Court must order the payment by the Commonwealth of an amount equal to that value at that time.

107FK Release of goods on security

- (1) This section applies to goods:
 - (a) that have been seized under a seizure warrant or section 9 of the *Crimes Act 1914*; and
 - (b) that are not taken to be forfeited to the Crown under section 107FE; and
 - (c) in respect of which proceedings have not yet been brought by the Commonwealth under section 107FF.
- (2) The owner of the goods may apply to a court of summary jurisdiction for an order that the goods be released to the owner on provision to the CEO of security for an amount determined by the court in accordance with subsection (4).
- (3) In determining whether or not to order the release of the goods on provision of a security, the court may have regard to:
 - (a) the impact that the continued retention of the goods would have on the economic interests of third parties; and
 - (b) any other like matters that the court considers relevant.
- (4) For the purposes of this section, the security to be provided in respect of the goods is security for an amount determined by the court that does not exceed the sum of:
 - (a) the market value of the goods at the time when the order is made; and

- (b) the costs incurred for storage of the goods from the time of their seizure until the time of their release under this section; reduced by the amount of any duty that has been paid on the goods.
- (5) If the security is given, the CEO is to release the goods to the applicant.

107FL Service by post

Either:

- (a) a seizure notice under section 107FB; or
 - (b) a notice under subsection 107FG(3);
- posted as a letter addressed to a person at the last address of the person known to the sender is taken to be properly addressed for the purposes of section 29 of the *Acts Interpretation Act 1901*.

107FM Disposal of forfeited goods

All goods seized under a seizure warrant or section 9 of the *Crimes Act 1914* that are taken to be condemned as forfeited to the Crown under section 107FE or that are condemned under section 107FF shall be dealt with and disposed of in accordance with the directions of the CEO.

107FN Destruction or concealment of evidential material or forfeited goods

- (1) A person must not engage in conduct if:
 - (a) the conduct:
 - (i) destroys, or renders incapable of identification, a document or thing that is, or may be, evidential material or a forfeited good; or
 - (ii) renders illegible or indecipherable such a document or thing; or
 - (iii) places or conceals on his or her body, or in any clothing worn by the person, such a document or thing; and
 - (b) the conduct is engaged in with the intention of preventing it from being seized by an officer in the exercise of the person's powers under a search warrant or a seizure warrant.

Penalty: Imprisonment for 2 years.

(2) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Subdivision G—Miscellaneous

107GA Nature of functions of magistrate under sections 107EB and 107FG

- (1) A function of making an order conferred on a magistrate by section 107EB or 107FG is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting the generality of subsection (1), an order made by a magistrate under section 107EB or 107FG has effect only by virtue of this Act and is not taken, by implication, to be made by a court.
- (3) A magistrate performing a function of, or connected with, making an order under section 107EB or 107FG has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the magistrate is a member).

Schedule 2—Further amendment of the Excise Act 1901

1 Subsection 4(1) (definition of *approved form*)

Repeal the definition, substitute:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

2 Subsection 4(1) (definition of *authorised officer*)

Omit “this Act”, substitute “any of the Excise Acts”.

3 Subsection 4(1) (definition of *authorised officer*)

Omit “of Customs”.

4 Subsection 4(1) (definition of *CEO*)

Omit “Chief Executive Officer of Customs”, substitute “Commissioner of Taxation”.

5 Transitional provision—things previously done by the CEO

Anything that:

- (a) was done, under any of the Excise Acts (as defined in subsection 4(1) of the *Excise Act 1901*), by the Chief Executive Officer of Customs in the capacity of the CEO; and
- (b) was in force immediately before the commencement of this item;

is taken, after that commencement, to have been done by the Commissioner of Taxation in that capacity.

6 Subsection 4(1) (definition of *Collector*)

Repeal the definition, substitute:

Collector means:

- (a) the CEO; or
- (b) in relation to a section of an Excise Act for which a person is an authorised officer—that authorised officer.

7 Subsection 4(1) (at the end of the definition of *container*)

Add:

Note: *Container* is defined differently in section 87 and in Division 1A of Part IX.

8 Subsection 4(1) (definition of *diesel fuel rebate*)

After “means”, insert “(except in paragraph 120(1)(vd))”.

9 Subsection 4(1)

Insert:

diesel fuel rebate Customs provisions means section 164, 164A, 164AA, 164AB, 164AC, 164AD, 164AE, 164AF or 240A, or subsection 273GAA(6) of the *Customs Act 1901*.

10 Subsection 4(1)

Insert:

excise place means:

- (a) a factory; or
- (b) an approved place; or
- (c) the premises specified in a producer licence or dealer licence.

11 Subsection 4(1)

Insert:

Industry Minister means the Minister for Industry, Science and Resources.

12 Subsection 4(1) (definition of *Officer*)

Repeal the definition, substitute:

officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act 1953*).

13 Transitional provision—officers of Customs

A person who, immediately before the commencement of this item:

- (a) was an officer of Customs within the meaning of the *Excise Act 1901*; and
- (b) held a position under which he or she exercised powers or performed functions under that Act;

is taken, immediately after that commencement, to be an officer for the purposes of that Act.

14 Subsection 4(1) (definition of *Officer of Customs*)

Repeal the definition.

15 Subsection 4(2)

Omit “an officer of police or”.

16 Section 4AA

Repeal the section.

17 Transitional provision—previously approved forms

Any form that, immediately before the commencement of this item, was a form approved under section 4AA of the *Excise Act 1901* is taken, after that commencement, to be a form approved as mentioned in section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

18 Section 7

Omit “Chief Executive Officer of Customs”, substitute “CEO”.

19 Subsection 8(1)

Omit “of Customs”.

20 Sections 12A and 13

Repeal the sections.

21 Section 16

Omit “Customs” (wherever occurring), substitute “CEO”.

22 Transitional provision—Customs securities

Any securities taken under section 16 of the *Excise Act 1901* that the Australian Customs Service held on the Commonwealth's behalf immediately before the commencement of this item are taken, after that commencement, to be held by the CEO on the Commonwealth's behalf.

23 At the end of section 16

Add:

Note: Authorities given under section 114C of the *Customs Act 1901* can be subject to conditions relating to securities under this section: see also section 61AB of this Act.

24 Section 19

Omit "Customs securities", substitute "securities taken for compliance with the Excise Acts".

25 Section 21

Omit "Customs".

Note: The heading to section 21 is altered by omitting "Customs".

26 Section 22

Omit "Customs".

Note: The heading to section 22 is altered by omitting "Customs".

27 Section 24

After "control of the Customs", insert "or the CEO's control".

28 Section 47 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

29 Section 49 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

30 Section 51 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

31 Section 52 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

32 Paragraph 58(1A)(d)

Omit “Customs”, substitute “CEO”.

33 Subsection 58(1B)

Omit “any Customs control”, substitute “the CEO’s control”.

34 Subsection 59A(8)

Omit “Customs”, substitute “CEO”.

35 Subsection 60(1)

Omit “the control of the Customs”, substitute “the CEO’s control”.

36 Paragraph 60(1A)(a)

Omit “the control of Customs”, substitute “the CEO’s control”.

37 Paragraph 60(1B)(a)

Omit “the control of the Customs”, substitute “the CEO’s control”.

38 Subsections 61(1), (2) and (3)

Omit “the control of Customs” (wherever occurring), substitute “the CEO’s control”.

Note: The heading to section 61 is replaced by the heading “**Control of excisable goods**”.

39 Subsection 61AA(1)

Omit “paragraph 30(d)”, substitute “paragraph 30(1)(d)”.

40 Section 61AB

Omit “granted”, substitute “given”.

41 At the end of section 61AB

Add:

Note: If an authority under section 114C of the *Customs Act 1901* is subject to a condition that any security required under section 16 of this Act be given, the authority is taken not to have been given until the security is given: see subsection 114C(5) of the *Customs Act 1901*.

42 Subsections 61A(1) and (2)

Omit “the control of the Customs” (wherever occurring), substitute “the CEO’s control”.

Note: The heading to section 61A is replaced by the heading “**Permission to remove goods that are subject to CEO’s control**”.

43 Subsection 61B(1)

Omit “the control of the Customs”, substitute “the CEO’s control”.

44 Subsection 61C(1)

Omit “the control of the Customs” (wherever occurring), substitute “the CEO’s control”.

45 Subsection 61C(5)

Omit “Customs”, substitute “CEO”.

46 Subsection 61D(2)

Omit “the control of the Customs”, substitute “the CEO’s control”.

47 Subsection 61D(11)

Omit “\$5,000”, substitute “50 penalty units”.

48 At the end of subsection 61D(11)

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

49 Subsection 61E(1)

Insert:

officer of Customs means a person:

- (a) employed in the Customs; or
- (b) authorised in writing by the Chief Executive Officer of Customs under the *Customs Act 1901* to perform all of the functions of an officer of Customs.

50 Subsection 61E(5)

Omit “Customs Acts”, substitute “Excise Acts”.

51 Subsection 61E(10)

Omit “\$5,000”, substitute “50 penalty units”.

52 At the end of subsection 61E(10)

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

53 Section 64

Omit “the control of the Customs”, substitute “the CEO’s control”.

54 Section 70 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

55 Section 76 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

56 Subsection 77B(3)

Omit “the Customs”, substitute “an officer”.

57 Section 77C (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

58 Section 77E (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

59 Paragraph 78AAAA(2)(a)

Omit “Minister for Primary Industries and Energy”, substitute “Industry Minister”.

60 Subsection 78AAAA(5)

Omit “Minister for Primary Industries and Energy”, substitute “Industry Minister”.

61 Subsection 78AA(1)

Omit “, to the Regional Director for a State or Territory”.

62 Paragraph 78AC(1)(b)

Omit “78A”, substitute “78AE”.

63 At the end of subsection 78AD(14)

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

64 Subsection 78AD(15)

After “120(1)(vc)”, insert “, (vd)”.

65 Paragraph 78AE(4)(a)

Omit “Customs”, substitute “an authorised officer”.

66 Paragraph 78AE(6)(b)

Omit all the words after “applicant that”, substitute “he or she may object against the amended assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*”.

67 Subsection 78AG(3)

Omit “made application under subsection 162C(1) for review of”, substitute “objected under subsection 162C(1) against”.

68 Paragraph 78AG(3)(a)

Omit all the words after “pending”, substitute:

the final determination:

- (i) by the CEO; or
- (ii) by the Administrative Appeals Tribunal on review from the CEO’s decision; or
- (iii) by a Court on appeal from the Tribunal; of the objection; and

69 Subparagraph 78AG(3)(a)(ii)

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

70 Paragraph 78AG(3)(b)

After “determination of the”, insert “CEO,”.

71 Section 83

Repeal the section.

72 Subsection 87(1)

Omit “Excise place”, substitute “excise place”.

Note: The heading to section 87 is altered by omitting “**Excise place**” and substituting “**excise place**”.

73 Paragraph 87(1)(b)

Omit “Excise place”, substitute “excise place”.

74 Subparagraph 87(1)(b)(ii)

Omit “the control of Customs”, substitute “the CEO’s control”.

75 Paragraph 87(3)(b)

Omit “Excise place”, substitute “excise place”.

76 Subsection 87(6) (definition of *Excise place*)

Repeal the definition.

77 Section 91

Omit “the control of the Customs”, substitute “the CEO’s control”.

78 Section 92 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

79 Subsections 100(1) and (2)

Omit “officer of Customs or police”, substitute “officer or police officer”.

80 Subsection 104(1)

Omit “officer of Customs or police”, substitute “officer or police officer”.

81 Subsection 104(1)

Omit “the control of the Customs”, substitute “the CEO’s control”.

82 Section 106

Omit “the control of the Customs”, substitute “the CEO’s control”.

83 Section 107 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

84 Section 109

Omit “his or her attorney or agent”, substitute “, or the plaintiff’s attorney or agent,”.

85 Section 112

Omit “his or her attorney or agent”, substitute “, or the plaintiff’s attorney or agent,”.

86 Paragraph 116(1)(d)

Omit “the control of the Customs”, substitute “the CEO’s control”.

87 Section 118

Omit “\$5,000”, substitute “50 penalty units”.

88 At the end of section 118

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

89 After paragraph 120(1)(vc)

Insert:

(vd) knowingly or recklessly obtain or retain diesel fuel rebate to which the person is not entitled under section 164 of the *Customs Act 1901*;

90 Paragraph 120(2)(a)

Omit “\$1,000”, substitute “10 penalty units”.

91 Subparagraph 120(2)(b)(ii)

Omit “\$50,000”, substitute “500 penalty units”.

92 Paragraph 120(2)(d)

Omit “\$5,000”, substitute “50 penalty units”.

93 At the end of subsection 120(2)

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

94 Subsections 120(3) and (4)

Omit “\$5,000”, substitute “50 penalty units”.

95 Paragraph 124(1)(f)

Omit “\$5,000”, substitute “50 penalty units”.

96 Paragraph 124(1)(g)

Omit “\$1,000”, substitute “10 penalty units”.

97 Subsection 124(2)

Omit “\$2,000”, substitute “20 penalty units”.

98 At the end of section 124

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

99 Section 133

Repeal the section, substitute:

133 Meaning of *Excise prosecution*

Excise prosecutions are proceedings by the CEO:

- (a) for the recovery of penalties under any Excise Act; or
- (b) for the recovery of pecuniary penalties under the *Customs Act 1901* for contraventions relating to diesel fuel rebate Customs provisions; or
- (c) for the condemnation of goods seized as forfeited.

100 Subsection 134(2)

Omit “\$40,000” (wherever occurring), substitute “400 penalty units”.

101 Subsection 134(4)

Omit “\$20,000” (wherever occurring), substitute “200 penalty units”.

102 At the end of section 134

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

103 Section 148

Omit “the control of the Customs”, substitute “the CEO’s control”.

104 Section 150

Omit “Customs”, substitute “CEO”.

105 Before section 159A

Insert:

159 Protection of confidentiality of information

- (1) This section restricts what a person (the *entrusted person*) may do with protected information, or protected documents, that the person has obtained in the course of official employment.
- (2) The entrusted person:
 - (a) must not make a record of protected information; and
 - (b) must not disclose it to anyone else;if the recording or disclosure is not in accordance with subsection (3).

Penalty: Imprisonment for 2 years or 500 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) It is not an offence against subsection (2) if any of the following apply to the recording or disclosure:
 - (a) the recording or disclosure is for the purposes of an excise law;
 - (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
 - (c) the entrusted person is the Commissioner or a Deputy Commissioner and the disclosure is to:
 - (i) the Chief Executive Officer of Customs; or
 - (ii) the Australian Statistician and is of information to be used for the purposes of the *Census and Statistics Act 1905*; or
 - (iii) another person for the purpose of that other person carrying out functions under a taxation law; or
 - (iv) the Administrative Appeals Tribunal in connection with proceedings under a taxation law;
 - (d) the disclosure is by a person authorised by the Commissioner or a Deputy Commissioner to disclose the information and the disclosure is to:
 - (i) the Chief Executive Officer of Customs; or

- (ii) the Australian Statistician and is of information to be used for the purposes of the *Census and Statistics Act 1905*; or
 - (iii) another person for the purpose of that other person carrying out functions under a taxation law.
- (4) Subsection (3) does not authorise the disclosure of information to a Minister.
- (5) Unless it is necessary for the purposes of an excise law, the entrusted person is not to be required:
- (a) to produce any protected document to a court; or
 - (b) to disclose protected information to a court.
- (6) In this section:

Customs diesel fuel rebate provision means:

- (a) section 164, 164A, 164AA, 164AB, 164AC, 164AD, 164AE, 164AF or 240A, or subsection 273GAA(6), of the *Customs Act 1901*; or
- (b) any regulation made under the *Customs Act 1901* for the purposes of a provision referred to in paragraph (a).

disclose means divulge or communicate.

excise law means:

- (a) any Excise Act; or
- (b) the *Fuel (Penalty Surcharges) Administration Act 1997*, and any regulations made under that Act; or
- (c) the Customs diesel fuel rebate provisions.

official employment means:

- (a) appointment or employment by the Commonwealth, or the performance of services for the Commonwealth; or
- (b) the exercise of powers or performance of functions under a delegation by the Commissioner.

protected document means any document made or given under, or for the purposes of, an excise law.

protected information means information that meets all the following conditions:

- (a) it relates to the affairs of a person other than the entrusted person;
- (b) it was obtained by the entrusted person, or by any other person, in the course of official employment;
- (c) it was disclosed or obtained under an excise law.

State or Territory officer means a person holding an office prescribed for the purposes of this definition.

106 Subparagraph 159(3)(c)(iv)

Omit “Administrative Appeals Tribunal”, substitute “Tribunal”.

107 Section 161

Repeal the section.

108 Subsection 162C(1)

Omit all the words before paragraph (ca), substitute “A person who is dissatisfied with a decision that applies to the person may object against the decision, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, if the decision is one of the following:”.

109 Subsection 162C(1A)

Repeal the subsection.

110 Subsection 162C(2)

Repeal the subsection, substitute:

- (2) If:
 - (a) a dispute referred to in section 154 has arisen; and
 - (b) the owner of the goods relating to the dispute has, under that section, deposited the amount of duty demanded by the Collector;

a person who is dissatisfied with the Collector’s decision to demand the amount may object against the decision, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

111 Subsection 162C(3)

Omit “An application may not be made under subsection (2) unless the application is made”, substitute “A person is not to object under subsection (2) except”.

112 Subsection 162C(4)

Omit “made an application”, substitute “objected”.

113 Transitional provision—existing applications

The amendments of section 162C of the *Excise Act 1901* made by items 108 to 112 of this Schedule does not affect the consideration of any application made under section 162C of that Act before the commencement of this item.

114 Section 163

Omit “of Customs”.

115 Part XV (heading)

Repeal the heading, substitute:

Part XV—Regulations and by-laws

116 Subsection 163A(1) (definition of *by-law*)

Repeal the definition.

117 Transitional provision—Departmental by-laws

Any Departmental by-laws that were, immediately before the commencement of this item, in force under the *Excise Act 1901*, continue in force, immediately after that commencement, as if they were by-laws.

118 Section 164

Omit “\$250”, substitute “3 penalty units”.

119 At the end of section 164

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

120 Paragraphs 165A(1)(b) and (2)(b)

Omit “Minister for Primary Industries and Energy”, substitute “Industry Minister”.

121 Subsections 165A(3) and (4)

Omit “Minister for Primary Industries and Energy”, substitute “Industry Minister”.

122 Schedule I

Omit “*Security to the Customs*”, substitute “*Security under the Excise Act 1901*”.

123 Schedule I

Omit “the Customs of the Commonwealth of Australia”, substitute “the CEO (as defined in that Act)”.

Schedule 3—Amendment of the Customs Act 1901

1 Subsection 4(1) (definition of *authorised officer*)

After “this Act”, insert “(other than a diesel fuel rebate provision)”.

2 Subsection 4(1)

Insert:

authorised taxation officer, in relation to a section of this Act, means a taxation officer authorised in writing by the Commissioner to exercise the powers or perform the functions of an authorised taxation officer under that section.

3 Subsection 4(1) (definition of *By authority*)

Repeal the definition, substitute:

by authority means:

- (a) in relation to a provision of this Act that is not a diesel fuel rebate provision—by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used; or
- (b) in relation to a diesel fuel rebate provision—by the authority of the taxation officer doing duty in the matter in relation to which the expression is used.

4 Subsection 4(1)

Insert:

Commissioner means the Commissioner of Taxation.

5 Subsection 4(1)

Insert:

diesel fuel rebate provision means section 164, 164A, 164AA, 164AB, 164AC, 164AD, 164AE, 164AF or 240A, or subsection 273GAA(6).

6 Subsection 4(1) (paragraphs (c) and (d) of the definition of *Officer of Customs*)

After “a Customs Act”, insert “(other than a diesel fuel rebate provision)”.

7 Subsection 4(1)

Insert:

taxation officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined in section 2 of the *Taxation Administration Act 1953*).

8 After subsection 4A(1)

Insert:

(1AA) However, if an approved form is to be used in connection with the diesel fuel rebate, then the reference to the approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

9 Transitional provision—previously approved forms

Any form that:

- (a) immediately before the commencement of this item, was a form approved under section 4A of the *Customs Act 1901*; and
- (b) before that commencement, was used in connection with the diesel fuel rebate;

is taken, after that commencement, to be a form approved as mentioned in section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

10 Section 7

Repeal the section, substitute:

7 General administration of Act

- (1) The Chief Executive Officer of Customs has the general administration of this Act (other than the diesel fuel rebate provisions).
- (2) The Commissioner of Taxation has the general administration of the diesel fuel rebate provisions.

11 After subsection 9(1)

Insert:

- (1A) The Minister may, by signed instrument, delegate to an officer within the meaning of the *Excise Act 1901*, all or any of the functions and powers of the Minister under the diesel fuel rebate provisions.

12 Paragraph 30(1)(d)

Omit “Customs control”, substitute “the Commissioner’s control”.

13 After subsection 114C(3)

Insert:

- (3A) An authority under this section to deal with goods may be expressed to be subject to a condition that any security required under section 16 of the *Excise Act 1901* be given.

14 After subsection 114C(4)

Insert:

- (5) Where an authority under this section to deal with goods is expressed to be subject to a condition that any security required under section 16 of the *Excise Act 1901* be given, the authority is taken not to have been given until the security has been given.

15 Subsection 114D(2)

Omit “paragraph 30(d)”, substitute “paragraph 30(1)(d)”.

16 Paragraph 114D(2)(a)

Omit “Customs control”, substitute “the Commissioner’s control”.

17 Subsection 164(1)

Omit “him”, substitute “the person”.

18 Paragraphs 164(1A)(d) and (e)

Omit “an officer”, substitute “a taxation officer”.

19 Subsection 164(1B)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

20 Paragraph 164(1D)(d)

Omit “authorised officer”, substitute “authorised taxation officer”.

21 Subsection 164(1E)

Omit “CEO”, substitute “Commissioner”.

22 Subsection 164(1E)

Omit “CEO’s”, substitute “Commissioner’s”.

23 Subsection 164(1F)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

24 Subsection 164(1G)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

25 Subsection 164(3)

Omit “a Collector”, substitute “the Commissioner”.

26 Subsection 164(4)

Omit “A Collector”, substitute “The Commissioner”.

27 Subsection 164(4B)

Omit “CEO”, substitute “Commissioner”.

28 Subsection 164(4B) (note)

Omit “CEO’s”, substitute “Commissioner’s”.

29 Subsection 164(5AA)

Omit “a Collector”, substitute “the Commissioner”.

30 Subsection 164A(1)

Omit “CEO, to the Regional Director for a State or Territory or to an officer”, substitute “Commissioner or to a taxation officer”.

31 Subsection 164AA(1)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

32 Paragraph 164AA(2)(a)

Omit “CEO’s”, substitute “Commissioner’s”.

33 Paragraph 164AA(3)(b)

Omit “an officer”, substitute “a taxation officer”.

34 Subsection 164AA(4)

Omit “CEO”, substitute “Commissioner”.

35 Subsection 164AA(5)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

36 Paragraph 164AA(6)(a)

Omit “CEO”, substitute “Commissioner”.

37 Paragraph 164AA(6)(b)

Omit “an officer”, substitute “a taxation officer”.

38 Subsection 164AA(7)

Omit “CEO”, substitute “Commissioner”.

39 Subparagraphs 164AA(7)(b)(i) and (ii)

Omit “CEO”, substitute “Commissioner”.

40 Paragraphs 164AA(8)(a), (9)(a) and (c) and 164AB(1)(a)

Omit “CEO”, substitute “Commissioner”.

41 Paragraph 164AB(1)(a)

Omit “an officer”, substitute “a taxation officer”.

42 Paragraph 164AB(1)(b)

Omit “CEO”, substitute “Commissioner”.

43 Paragraph 164AB(1)(c)

Omit “CEO’s”, substitute “Commissioner’s”.

44 Subsection 164AC(1)

Omit “CEO”, substitute “Commissioner”.

45 Paragraph 164AC(1)(b)

Omit “authorised officer”, substitute “authorised taxation officer”.

46 Subsection 164AC(2)

Omit “authorised officer”, substitute “authorised taxation officer”.

47 Paragraphs 164AC(2)(a) and (c)

Omit “authorised officer”, substitute “authorised taxation officer”.

48 Subsection 164AC(3)

Omit “authorised officers”, substitute “authorised taxation officers”.

49 Paragraphs 164AC(3)(a), (b) and (c)

Omit “authorised officer” (wherever occurring), substitute “authorised taxation officer”.

50 Subsection 164AC(4)

Omit “authorised officer”, substitute “authorised taxation officer”.

51 Paragraph 164AC(4)(b)

Omit “authorised officer”, substitute “authorised taxation officer”.

52 Subsection 164AC(5)

Omit “authorised officer”, substitute “authorised taxation officer”.

53 Paragraph 164AC(5)(b)

Omit “authorised officer”, substitute “authorised taxation officer”.

54 Subsection 164AC(6)

Omit “authorised officer”, substitute “authorised taxation officer”.

55 Paragraph 164AC(6)(b)

Omit “authorised person”, substitute “authorised taxation officer”.

56 Subsection 164AC(7)

Omit “authorised officer”, substitute “authorised taxation officer”.

57 Subsection 164AC(10)

Omit “authorised officer’s”, substitute “authorised taxation officer’s”.

58 Subsection 164AC(11)

Omit “CEO”, substitute “Commissioner”.

59 Subsection 164AC(13)

Omit “authorised officer” (wherever occurring), substitute “authorised taxation officer”.

60 Subsection 164AC(14)

Omit “authorised officer”, substitute “authorised taxation officer”.

61 Subsection 164AC(15)

Omit “paragraph 234(1)(c) or (d)”, substitute “paragraph 234(1)(d), or paragraph 120(1)(vd) of the *Excise Act 1901*”.

62 Subsection 164AC(16)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

63 Subsections 164AD(1) and (2)

Omit “CEO”, substitute “Commissioner”.

Note: The heading to section 164AD is altered by omitting “CEO” and substituting “Commissioner”.

64 Paragraph 164AD(2)(a)

Omit “an officer”, substitute “a taxation officer”.

65 Paragraph 164AD(2)(b)

Omit “CEO”, substitute “Commissioner”.

66 Subsection 164AD(3)

Omit “CEO”, substitute “Commissioner”.

67 Subparagraph 164AD(3)(a)(i)

Omit “an officer”, substitute “a taxation officer”.

68 Subparagraphs 164AD(3)(a)(i) and (ii)

Omit “CEO”, substitute “Commissioner”.

69 Paragraph 164AD(3)(b)

Omit “CEO”, substitute “Commissioner”.

70 Subsection 164AD(4)

Omit “CEO”, substitute “Commissioner”.

71 Paragraph 164AD(4)(a)

Omit “Customs”, substitute “an authorised taxation officer”.

72 Paragraph 164AD(4)(b)

Omit “CEO”, substitute “Commissioner”.

73 Paragraph 164AD(5)(b)

Omit “CEO”, substitute “Commissioner”.

74 Subsection 164AD(5)

Omit “CEO”, substitute “Commissioner”.

75 Subsection 164AD(6)

Omit “CEO”, substitute “Commissioner”.

76 Paragraphs 164AD(6)(a) and (b)

Omit “CEO”, substitute “Commissioner”.

77 Paragraph 164AD(6)(b)

Omit all the words after “applicant that”, substitute “he or she may object against the amended assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*”.

78 Subsection 164AD(8)

Omit “CEO”, substitute “Commissioner”.

79 Section 164AE

Omit “CEO” (wherever occurring), substitute “Commissioner”.

Note: The heading to section 164AE is altered by omitting “CEO’s” and substituting “Commissioner’s”.

80 Subsections 164AF(1), (2) and (3)

Omit “CEO”, substitute “Commissioner”.

81 Subsection 164AF(3)

Omit “made application under subsection 273GA(1) for review of”, substitute “objected under section 273JB against”.

82 Paragraph 164AF(3)(a)

Omit all the words after “pending”, substitute:

the final determination:

- (i) by the Commissioner; or
 - (ii) by the Administrative Appeals Tribunal on review from the Commissioner’s decision; or
 - (iii) by a Court on appeal from the Tribunal;
- of the objection; and

83 Subparagraph 164AF(3)(a)(ii)

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

84 Paragraph 164AF(3)(b)

After “determination of the”, insert “Commissioner,”.

85 Subsection 183UA(1) (paragraph (c) of the definition of *authorised person*)

Omit “paragraphs (b), (c), (d), (e) and (f)”, substitute “paragraph (c)”.

86 Subsection 183UA(1) (paragraph (b) of the definition of *forfeited goods*)

Repeal the paragraph.

87 Subsection 183UA(1) (paragraph (c) of the definition of *forfeited goods*)

Omit “; or”, substitute “.”.

88 Subsection 183UA(1) (paragraphs (d), (e) and (f) of the definition of *forfeited goods*)

Repeal the paragraphs.

89 Subsection 183UA(1) (definition of *offence*)

Repeal the definition, substitute:

offence means:

- (a) an offence against this Act (other than an offence relating to diesel fuel rebate); or
- (b) an offence against the *Commerce (Trade Descriptions) Act 1905*.

90 Transitional provision—matters already the subject of action under Part XII

The amendments of subsection 183UA(1) of the *Customs Act 1901* made by items 85 to 89 of this Schedule do not apply, after the commencement of this item, to anything done under Part XII of that Act that relates to a matter in relation to which anything had already been done, before that commencement, under that Part.

91 Subsection 198(8)

Omit “or Excise”.

92 Subsection 205D(9) (definition of *special forfeited goods*)

Repeal the definition, substitute:

special forfeited goods includes goods that are forfeited under section 7, 10, 11 or 13 of the *Commerce (Trade Descriptions) Act 1905*.

93 Paragraph 234(1)(c)

Repeal the paragraph.

94 Paragraph 240A(4)(b)

Omit “CEO”, substitute “Commissioner”.

95 Section 244

Repeal the section, substitute:

244 Meaning of *Customs prosecution*

Customs prosecutions are proceedings by the Customs:

- (a) for the recovery of penalties under this Act, other than:
 - (i) pecuniary penalties referred to in section 243B; or
 - (ii) pecuniary penalties for contraventions relating to diesel fuel rebate provisions; or
- (b) for the condemnation of ships, aircraft or goods seized as forfeited.

96 Transitional provision—existing Customs prosecutions

The amendment of section 244 of the *Customs Act 1901* made by item 95 of this Schedule does not apply to any Customs prosecution instituted before the commencement of this item.

97 Subsection 273GAA(6)

Omit “a Collector”, substitute “the Commissioner”.

98 Subsection 273GAA(6)

Omit “he”, substitute “the Commissioner”.

99 Paragraphs 273GA(1)(ha), (hb), (hba) and (hc)

Repeal the paragraphs.

100 Transitional provision—existing applications

The amendment of section 273GA of the *Customs Act 1901* made by item 99 of this Schedule does not affect the consideration of any application made under section 273GA of that Act before the commencement of this item.

101 After section 273JA

Insert:

273JB Review of decisions relating to diesel fuel rebate

- (1) A person who is dissatisfied with a decision that applies to the person may object against the decision, in the manner set out in

Part IVC of the *Taxation Administration Act 1953*, if the decision is one of the following:

- (a) a decision of the Commissioner under section 164 refusing to pay a rebate;
 - (b) a decision of the Commissioner under subsection 164(1G) that the Commissioner is satisfied of the matter referred to in that subsection;
 - (c) a decision by the Commissioner not to amend an assessment when subparagraph 164AD(3)(a)(i) applies (in the case where an applicant has notified a taxation officer doing duty in relation to diesel fuel rebate of an error, or errors, in accordance with paragraph 164AB(1)(a));
 - (d) a decision of the Commissioner under section 164AD to amend the assessment of a person's rebate entitlement (other than such a decision that is made in conjunction with the issuing by the Commissioner of a notice under section 164AA in respect of that rebate entitlement).
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

102 Transitional provision—existing applications

The amendment of the *Customs Act 1901* made by item 101 of this Schedule does not apply to a decision in relation to which an application was made under section 273GA of that Act before the commencement of this item.

103 Subsection 273JB(2)

Omit “*Administrative Appeals Tribunal Act 1975*”, substitute “*Administrative Review Tribunal Act 2001*”.

Schedule 4—Amendment of the Distillation Act 1901

1 Section 3

Omit “Chief Executive Officer of Customs”, substitute “CEO”.

2 Subsection 6(1) (definition of *CEO*)

Omit “Chief Executive Officer of Customs”, substitute “Commissioner of Taxation”.

3 Subsection 6(1) (definition of *Collector*)

Omit “*Customs Act 1901*”, substitute “*Excise Act 1901*”.

4 Subsection 6(1) (definition of *Officer* or *Officer of Customs*)

Repeal the definition, substitute:

officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act 1953*).

5 Transitional provision—officers of Customs

A person who, immediately before the commencement of this item:

- (a) was an officer of Customs within the meaning of the *Distillation Act 1901*; and
- (b) held a position under which he or she exercised powers or performed functions under that Act;

is taken, immediately after that commencement, to be an officer for the purposes of that Act.

6 Subsection 8(1)

Omit “, XIII”.

7 Subsection 8(1)

Omit “sections 162A and 162B”, substitute “section 162B”.

8 Section 10 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

9 Subsection 11(1)

Omit “he”, substitute “the person”.

10 Subsection 11(1)

Omit “his”, substitute “his or her”.

11 Section 12

Omit “he”, substitute “the person”.

12 Section 12

Omit “him”, substitute “the person”.

13 Section 12 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

14 Section 30 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

15 Section 31

Repeal the section.

16 Section 33 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

17 Section 34

Omit “his”, substitute “the distiller’s”.

18 Section 34 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

19 Section 35

Repeal the section.

20 Section 36 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

21 Sections 37 and 38

Omit “his” (wherever occurring), substitute “the distiller’s”.

22 Sections 40 and 44

Repeal the sections.

23 Subsection 50(1)

Omit “he”, substitute “the Collector”.

24 Subsection 50(2)

Omit “he”, substitute “he or she”.

25 Subsection 50(3)

Omit “he”, substitute “the distiller”.

26 Section 50A

Repeal the section.

27 Section 51

Omit “he”, substitute “the officer”.

28 Section 52

Repeal the section.

29 Section 54 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

30 Sections 55 and 56

Repeal the sections.

31 Section 57

Omit “the control of the Customs”, substitute “the CEO’s control”.

Note: The heading to section 57 is replaced by the heading “**Control of spirits**”.

32 Section 57 (penalty)

Repeal the penalty, substitute:

Penalty: 200 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

33 Paragraph 57A(a)

Omit “the control of the Customs”, substitute “the CEO’s control”.

34 Section 58 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

35 Subsection 59(2) (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

36 Section 59B

Repeal the section.

37 Section 62 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

38 Section 69 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

39 Section 71 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

40 Subsection 73A(1)

Omit “his” (wherever occurring), substitute “his or her”.

41 Subsection 73A(1) (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

42 Subsection 73A(2)

Repeal the subsection, substitute:

- (2) A distiller or a vigneron must not, without permission, possess, or have the custody or control of, any still except at the distillery, or at the premises to which the vigneron's licence relates, as the case may be.

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

43 Paragraph 74(4)

Omit "have upon his premises or in his custody or under his control", substitute "have on the person's premises, or in the custody, or under the control, of the person,".

44 Paragraph 74(8)

Omit "his", substitute "his or her".

45 Section 74 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

46 Sections 76 and 77

Repeal the sections.

47 Section 77A (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

48 Section 81

Repeal the section.

49 Subsection 82(1)

Omit "he", substitute "the Collector".

50 Subsection 82(1)

Omit “collector”, substitute “Collector”.

51 Subsection 82B(1)

Repeal the subsection, substitute:

- (1) A person who is dissatisfied with a decision that applies to the person may object against the decision, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, if the decision is one of the following:
 - (a) a decision of the Collector under section 20, 22, or 23; or
 - (b) a cancellation of a licence by the CEO under section 24.

52 Transitional provision—existing applications

The amendment of section 82B of the *Distillation Act 1901* made by item 49 of this Schedule does not apply to a decision in relation to which an application was made under section 82B of that Act before the commencement of this item.

53 Subsection 82B(1A)

Repeal the subsection.

Schedule 5—Amendment of the Spirits Act 1906

1 Section 2A

Omit “Chief Executive Officer of Customs”, substitute “CEO”.

2 Subsection 3(1) (definition of *Article of food or drink*)

Omit “by man”, substitute “by humans”.

3 Subsection 3(1)

Insert:

CEO means the Commissioner of Taxation.

4 Subsection 3(1) (definition of *Collector* and *Collector of Customs*)

Repeal the definition, substitute:

Collector has the same meaning as in the *Excise Act 1901*.

5 Subsection 3(1) (definition of *Medicines*)

Omit “Departmental By-laws”, substitute “by-laws”.

6 Subsection 3(1) (definition of *Illicit Methylated Spirits*)

Omit “the control of the Customs”, substitute “the CEO’s control”.

7 Subsection 3(1) (definition of *Officer* or *Officer of Customs*)

Repeal the definition, substitute:

officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act 1953*).

8 Transitional provision—officers of Customs

A person who, immediately before the commencement of this item:

(a) was an officer of Customs within the meaning of the *Spirits Act 1906*; and

(b) held a position under which he or she exercised powers or performed functions under that Act;

is taken, immediately after that commencement, to be an officer for the purposes of that Act.

9 Section 4

Omit “XI, XII, XIII, XIV and XV of the *Customs Act 1901*”, substitute “II, V, VI, VIII, IX, X, XI, XII and XIV of the *Excise Act 1901*”.

Note: The heading to section 4 is altered by omitting “*Customs*” and substituting “*Excise*”.

10 Subsection 7(2)

Repeal the subsection.

Note: The heading to section 7 is altered by omitting “**and marking**”.

11 Section 9 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

12 Section 11

Omit “of Customs”.

13 Section 12

Omit “the control of the Customs”, substitute “the CEO’s control”.

14 Section 13

Repeal the section.

15 Subsection 14(3)

Repeal the subsection.

16 Subsection 14(4)

Omit “the control of the Customs”, substitute “the CEO’s control”.

17 Section 15 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

18 Paragraphs 16(1)(a) and (b)

Omit “his”, substitute “his or her”.

19 Subsection 16(1) (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

20 Subsection 16(2)

Omit “he”, substitute “he or she”.

21 Subsection 16(2)

Omit “his”, substitute “his or her”.

22 Section 19

Repeal the section.

23 Subsection 20(1)

Omit “of Customs”.

24 Subsection 20(2)

Repeal the subsection, substitute:

- (2) A person who is dissatisfied with a decision of a Collector under subsection (1) that applies to the person may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

25 Transitional provision—existing applications

The amendment of section 20 of the *Spirits Act 1906* made by item 24 of this Schedule does not apply to a decision in relation to which an application was made under section 20 of that Act before the commencement of this item.

26 Subsection 20(2A)

Repeal the subsection.

27 Section 21

Repeal the section.

28 Subsections 22(4) and (5)

Repeal the subsections.

29 Section 23 (penalty)

Repeal the penalty, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

30 Paragraph 26(g)

Omit “One hundred dollars”, substitute “1 penalty unit”.

31 At the end of section 26

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

32 Schedule

Repeal the Schedule.

Schedule 6—Amendment of the Coal Excise Act 1949

1 Section 2A

Omit “Chief Executive Officer of Customs”, substitute “CEO”.

2 Section 4 (definition of CEO)

Omit “Chief Executive Officer of Customs”, substitute “Commissioner of Taxation”.

3 Section 4 (definition of Collector)

Omit “*Customs Act 1901*”, substitute “*Excise Act 1901*”.

4 Section 4 (definition of officer)

Repeal the definition, substitute:

officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act 1953*).

5 Transitional provision—officers

A person who, immediately before the commencement of this item:

- (a) was an officer within the meaning of the *Coal Excise Act 1949*; and
- (b) held a position under which he or she exercised powers or performed functions under that Act;

is taken, immediately after that commencement, to be an officer for the purposes of that Act.

6 Paragraph 5(a)

Omit “sections 14, 15 and 23”, substitute “section 15”.

7 Paragraph 5(b)

After “87,”, insert “87AA,”.

8 Paragraph 5(c)

After “and 117”, insert “to 117I”.

9 Section 7

Omit “he”, substitute “the person”

10 Section 7 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

11 Section 12

Omit “he”, substitute “he or she”.

12 Section 18

Omit “his”, substitute “the producer’s”.

13 Section 18 (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

14 Sections 20 and 21 (penalties)

Repeal the penalties, substitute:

Penalty: 10 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

15 Section 22 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

16 Section 23

Omit “him”, substitute “the producer”.

17 Subsection 24(1)

Repeal the penalty, substitute:

Penalty: 50 penalty units

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

18 Subsections 25(2) and (3)

Repeal the subsections.

19 Section 26

Omit “the control of the Customs”, substitute “the CEO’s control”.

20 Section 27A

Repeal the section, substitute:

27A Review of decisions

- (1) A person who is dissatisfied with a decision that applies to the person may object against the decision, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, if the decision is one of the following:
- (a) a determination of the Collector under section 10;
 - (b) a decision of the Collector under section 12, 14, 15 or 16; or
 - (c) a decision of the CEO under section 17.

(1A) In subsection (1), *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

21 Transitional provision—existing applications

The amendment of the *Coal Excise Act 1949* made by item 20 of this Schedule does not apply to a decision in relation to which an application was made under section 27A of that Act before the commencement of this item.

22 Subsection 27A(1A)

Omit “*Administrative Appeals Tribunal Act 1975*”, substitute “*Administrative Review Tribunal Act 2001*”.

23 Subsection 27A(2)

Repeal the subsection.

24 Section 28

Omit "\$200", substitute "2 penalty units".

25 At the end of section 28

Add:

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Schedule 7—Amendment of other Acts

Customs Administration Act 1985

1 Section 3 (definition of *law of customs or excise*)

Repeal the definition, substitute:

law of customs means:

- (a) this Act; or
- (b) any other Act of which the CEO has the general administration; or
- (c) if the CEO has the general administration of a particular provision or provisions only of an Act—that provision or those provisions; or
- (d) if the CEO has the general administration of an Act, or of a particular provision or provisions of an Act, only in so far as that Act, or that provision or those provisions, relates or relate to a particular matter or matters—that Act, or that provision or those provisions, in so far as that Act, or that provision or those provisions, relates or relate to that matter or those matters; or
- (e) any instrument (including rules, regulations, by-laws or determinations) under this Act, under an Act to which paragraph (b) applies, under a provision to which paragraph (c) applies or under an Act or provision referred to in paragraph (d) in so far as it relates to a matter so referred to.

2 Subsection 4(4)

Omit “or excise”.

3 Subsections 14(1) and (3)

Omit “or excise”.

4 Subsection 14(5)

Repeal the subsection, substitute:

- (5) In this section:

officer of Customs means a person who is an Officer of Customs for the purposes of the *Customs Act 1901*.

5 Subsection 16(1A) (paragraphs (d) and (e) of the definition of authorised person)

Omit “or excise”.

6 Paragraph 16(9)(h)

Omit “or excise”.

7 Paragraphs 16A(1)(a) and (b)

Omit “or excise”.

8 Subsection 16A(2)

Omit “or excise”.

Excise Tariff Act 1921

9 Section 1A

Omit “Chief Executive Officer of Customs”, substitute “CEO”.

10 Subsection 3(1) (definition of CEO)

Omit “Chief Executive Officer of Customs”, substitute “Commissioner of Taxation”.

11 Paragraph 5(1)(b)

Omit “the control of the Customs, or to Excise supervision”, substitute “the CEO’s control”.

12 Sub-subparagraphs 5(2)(b)(ii)(A) and (c)(ii)(A)

Omit “the control of the Customs or to Excise supervision”, substitute “the CEO’s control”.

13 Subsection 6AB(1)

Omit “Departmental By-laws”, substitute “by-laws”.

14 Subsection 6B(1) (definition of prescribed production area)

Omit “Departmental By-laws”, substitute “by-laws”.

15 Subsection 6C(1) (definition of *prescribed new production area*)

Omit “Departmental By-laws”, substitute “by-laws”.

16 Subsection 6D(1) (definition of *prescribed intermediate production area*)

Omit “Departmental By-laws”, substitute “by-laws”.

17 Paragraph 11(c) of the Schedule

Omit “section 34”, substitute “Part IV”.

18 Subitems 11(E) and (F) of the Schedule

Omit “section 34”, substitute “Part IV”.

19 Paragraph 11(G)(1) of the Schedule

Omit “section 34”, substitute “Part IV”.

Fuel (Penalty Surcharges) Administration Act 1997

20 Subsection 4(1) (definition of *authorised officer*)

Omit “of Customs”.

21 Subsection 4(1)

Insert:

CEO means the Commissioner of Taxation.

22 Subsection 4(1) (paragraph (b) of the definition of *Excise place*)

Omit “section 34”, substitute “Part IV”.

23 Subsection 4(1)

Insert:

officer means a person employed or engaged under the *Public Service Act 1999* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act 1953*).

24 Section 46

Repeal the section.

25 Section 49A

Omit “of Customs”.

26 Subsection 49B(2)

Omit “of Customs”.

Note: The heading to subsection 49B(2) is altered by omitting “*Customs officer’s*” and substituting “*Officer’s*”.

27 Subsection 50(1)

Omit “of Customs”.

Taxation Administration Act 1953

28 Section 2

Insert:

Customs diesel fuel rebate provision means:

- (a) section 164, 164A, 164AA, 164AB, 164AC, 164AD, 164AE, 164AF or 240A, or subsection 273GAA(6), of the *Customs Act 1901*; or
- (b) any regulation made under the *Customs Act 1901* for the purposes of a provision referred to in paragraph (a).

29 Section 2 (after paragraph (ba) of the definition of *taxation law*)

Insert:

- (bb) the Customs diesel fuel rebate provisions;

30 Section 2 (note at the end of the definition of *taxation law*)

Re-number as note 1.

31 Section 2 (at the end of the definition of *taxation law*)

Add:

Note 2: Subsection (2) restricts the meaning of this term in Part III, and in Subdivision 284-B in Schedule 1.

32 At the end of section 2

Add:

- (2) Despite the definition of *taxation law* in subsection (1), the following are not taxation laws for the purposes of Part III, and Subdivision 284-B in Schedule 1:
- (a) any Excise Act (as defined in subsection 4(1) of the *Excise Act 1901*);
 - (b) the *Fuel (Penalty Surcharges) Administration Act 1997*;
 - (c) the Customs diesel fuel rebate provisions.

33 Subsection 3F(1)

Omit “Comptroller-General”, substitute “Chief Executive Officer”.

Note: The heading to section 3F is altered by omitting “Comptroller-General” and substituting “Chief Executive Officer”.

34 Part III (after the heading)

Insert:

Note: Subsection 2(2) specifies laws that are not taxation laws for the purposes of this Part.

35 Subsection 250-10(2) in Schedule 1 (after table item 20)

Insert:

21	coal excise duty	23	<i>Coal Excise Act 1949</i>
22	administrative penalty relating to diesel fuel rebate	164AA	<i>Customs Act 1901</i>
23	stock deficiency	50	<i>Distillation Act 1901</i>
24	excise duty	54	<i>Excise Act 1901</i>
24A	administrative penalty relating to diesel fuel rebate	78AB	<i>Excise Act 1901</i>
24B	stock deficiency	105	<i>Excise Act 1901</i>

36 Subsection 250-10(2) in Schedule 1 (after table item 35)

Insert:

37 penalty surcharge 8 *Fuel (Penalty Surcharges)
Administration Act 1997*

37 At the end of subsection 284-75(1) in Schedule 1

Add:

Note: Subsection 2(2) specifies laws that are not taxation laws for the purposes of this Subdivision.

*[Minister's second reading speech made in—
House of Representatives on 7 December 2000
Senate on 27 March 2001]*

(205/00)